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IN THE

Supreme Court of the United States

October Term, 1965

No. 1021

J. VERNON YOST, ET AL.

Petitioners

VS.

HON. EUGENE GUNBY,
Ordinary of Fulton County, ET AL.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Georgia is reported at 221 Ga. 552, 145 SE 2d 575 (1965), decided November 9, 1965, rehearing denied November 29, 1965.

JURISDICTION

Jurisdiction is invoked by the petitioners under the provisions of 28 U.S.C.A. 1257 (3). Jurisdiction is disputed by the respondents on the grounds that there is

no substantial federal question. Cf. Rule 19 (1) (2), United States Supreme Court.

QUESTIONS PRESENTED

1. Should a decision of a State Supreme Court, concerned wholly with State procedural law, and involving no substantial federal questions, be reviewed by the United States Supreme Court on petition for writ of certiorari?

2. Was the decision of the Supreme Court of Georgia in the instant case based solely on State procedural questions?

(a) Did the decision of the Georgia Supreme Court, holding that the appeal should be dismissed because the enumeration of errors was not filed in time, involve anything other than a State procedural question?

(b) Should the decision of the Georgia Supreme Court be reviewed when, even if it were incorrect, the record in the case clearly showed that the appeal was filed too late to be considered by the Georgia Appellate courts?

3. Should the United States Supreme Court review the decisions of the Supreme Court of Georgia, when the record shows that all of the original relief sought had to do with the invalidity of certain elections or actions thereunder, and the necessity for such elections has been obviated by subsequent action of the General Assembly of Georgia?

STATUTES INVOLVED

The petition for certiorari involves provisions of the Georgia Appellate Procedure Act of 1965, Ga. Code

Anno., Chap. 6-7 through 6-12, and 6-17 (Ga. L. 1965, p. 18, 240), and the Rules of the Supreme Court of Georgia, Ga. Code Anno., Chap. 24-45, 220 Ga. 912 (1965). Also involved are the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2246 (Appendix, p. 33) as amended by Act 403, 1966 Session of the General Assembly of Georgia, Ga. L. 1966, p. ...., Appendix, p. 30). Pertinent portions of these statutory authorities are quoted in the argument section of this brief.

STATEMENT OF CASE [1]

This originally was a suit brought in the Superior

[1] Counsel for Respondents are advised by the Clerk of the Supreme Court of Georgia, that only one copy of the transcript of the record to be filed with this Court was prepared, and since it has already been filed with this Court, it is impossible to duplicate the pagination contained therein. Accordingly, citations to the Record ("R. ....") appearing in this brief are to the page numbers of the record in the Supreme Court of Georgia. Counsel have been informed that this pagination also appears in the record certified for use in this Court in addition to the new pagination. In commenting on the record filed with this Court, counsel for respondents would be somewhat remiss in their duty as members of the bar of the Supreme Court of Georgia if they did not make some comment upon the affidavits contained in the appendix to the petition in this case. A. 20-40. These affidavits are so biased, argumentative and one-sided as to be unworthy of any extended discussion. The Supreme Court of Georgia was well aware of what took place before it at the hearing on November 9, 1965, and apparently considered any action in reference with such scurrilous documents to be beneath its dignity. In accordance with this view, these documents were physically removed from the files of the Supreme Court of Georgia and returned to counsel for the petitioners. Since the affidavits present issues which, if they were not contained in the judicial proceeding, would likely be grounds for an action for libel under Georgia law, it is suggested that this court treat them in the same manner as the Supreme Court of Georgia. If information is desired as to the proceedings which took place on November 9, 1965, this should be requested from the justices of the Supreme Court of Georgia, or opportunity should be given to present testimony subject to cross-examination.

Court of Fulton County, Georgia, by thirteen named plaintiffs against thirteen named defendants, and all of the members of the Board of Aldermen of the City of Atlanta, an additional sixteen individuals. All of the defendants were public officials of Fulton, DeKalb and Gwinnett County, Georgia, the City of Atlanta, Georgia, or of the State of Georgia. The petition as amended attempted to contest the validity of referendum elections held in certain governmental units of the Atlanta Metropolitan area on June 16, 1965, and sought to urge the invalidity of certain statutes and provisions of the Constitution of Georgia under both the Georgia and the United States Constitutions. Subsequent to the initial filing of the suit, the Interim Study Committee of the Metropolitan Atlanta Rapid Transit Authority was permitted to intervene as a party defendant. (R. 44).[2]

On July 28, 1965, the Honorable Virlyn D. Moore, Judge of the Superior Court of Fulton County, sustained general demurrers to the petition as amended and dismissed the same, holding, in effect, that no valid election contest was alleged and that no valid State or Federal Constitutional attack was made on any statute or constitutional provision of the State of Georgia (R. 113).

On August 30, 1965, the plaintiffs, petitioners in this Court, filed an appeal to the Supreme Court of Georgia. The appeal was docketed with the Clerk of the Supreme

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[2] Under the terms of Ga. Laws, 1965, p. 2243, 2247, the Interim Study Committee of the Metropolitan Atlanta Rapid Transit Authority ceased to exist on January 3, 1966. The Interim Study Committee was replaced by the Metropolitan Atlanta Rapid Transit Authority. It should be noted that the Metropolitan Rapid Transit Authority is not now and never has been a party to the instant action, although its counsel has joined in this brief in opposition as a party of interest not a party to the record because of concern with the outcome of this litigation.

Court of Georgia on September 17, 1965. Although there is no formal order appearing in the record of the case, it is conceded that the Hon. William H. Duckworth, Chief Justice of the Supreme Court of Georgia, extended the time for the filing of *briefs* for all parties to the appeal for a period of ten (10) days. No contention is made that there was any extension of time requested for or granted for the filing of an enumeration of errors. The brief and the enumeration of errors of the petitioners was filed with the Supreme Court on October 5, 1965.

The case came on duly for argument before the full bench of the Supreme Court of Georgia (Justice Mobley being absent for providential cause) on November 9, 1965. At that time the appeal was dismissed on the grounds that the enumeration of errors was not filed with the Georgia Supreme Court within the time provided by law. 221 Ga. 552, 145 S.E. 2d 575 (1965). This decision was adhered to, on motion for rehearing on November 29, 1965. *Ibid.* The published decision of the Supreme Court of Georgia shows that no ruling was made as to the correctness or incorrectness of the trial court in holding that no cause of action was stated for an election contest or any constitutional attack in the original petition. It is from the judgment of the Supreme Court of Georgia dismissing the appeal, adhered to on rehearing, that the petitioners have filed their petition for writ of certiorari to this Court.

SUMMARY OF ARGUMENT

It is the contention of the respondents that the petition for a writ of certiorari should be denied for three reasons. Initially, it should be pointed out the express basis of the decision of the Supreme Court of Georgia in the

instant case was that the state court appeal should be dismissed because the enumeration of errors was not filed within the time provided by law. This is purely a question of Georgia procedural law and presents no substantial federal question for review by this Court.

Secondly, it is the contention of the respondents that the decision of the Supreme Court of Georgia was correct, and even if it were not, review by this Court would accomplish nothing since Georgia law would have required dismissal of the state appeal on grounds involving no federal questions.

Lastly, it is felt that this case is inappropriate for grant of the writ of certiorari, as the issues in the main case have been rendered moot. Even if all of the petitioners' difficulties as to Georgia procedure are ignored, it can be seen that the only prayers for relief concern the validity of certain elections, and action thereunder. Subsequent to the filing of the petition for certiorari, the necessity of such elections was obviated by action of the General Assembly of Georgia, and, hence, any attacks on the validity of such elections or actions taken thereunder are pointless.

ARGUMENT

I. The Petition for Writ of Certiorari, Seeking to Attack a Judgment of a State Supreme Court, Based Solely on An Interpretation of State Procedural Law, Presents No Substantial Federal Question for Review by This Court.

The initial contention of the respondents, that there is no substantial federal question, can perhaps be best set forth through a careful analysis and examination of the "Questions Presented for Review" contained in

pages 5 through 9 of the petition. It is clear that one of the questions presented involves no federal issue whatsoever. Question 2 is whether "the Supreme Court of Georgia deprived petitioners of their liberty and property without due process of law and equal protection of law" in certain specified particulars. There is no allegation that action taken by the Supreme Court of Georgia in any way infringes upon any federal right. It should be noted that the Georgia Constitution contains an express due process clause. (Ga. Code Anno. 2-102, Ga. Const., Art. I, Sect. I, Para. II). "It is well settled that such an averment [alleging a taking of property without due process] making no reference to the Constitution of the United States and asserting no express rights thereunder, is solely referable to the State Constitution which, in this instance, has a due process clause and *affords no basis whatsoever for invoking the jurisdiction of this Court.*"

> *McDonald* v. *Oregon R. & Nav. Co.*, 233 U.S. 665; 345 S. Ct. 772, 58 L. Ed. 1145 (1914) (Emphasis supplied).

It is equally clear that the other questions presented for review, even though attempting to allege a violation of the petitioners' rights under the 14th Amendment of the Constitution of the United States, actually present no substantial Federal questions for review by this Court. An examination of the opinion of the Supreme Court of Georgia, *Yost, et al.* v. *Gunby, et al.*, 221 Ga. 552, 145 S.E. 2d 575 (1965) clearly shows that the only point which was decided by that Court was that the enumeration of errors filed more than fifteen days after the appeal

was docketed was not timely, and, hence, the appeal must be dismissed.[3]

This is solely a question of the Georgia Supreme Court interpreting Georgia procedural law, to-wit: the Georgia Appellate Procedure Act of 1965 (Ga. Code Anno. Chap. 6-7 through 6-12; Ga. L. 1965, p. 18 et seq., P. 240 et seq.) Although the petitioners allege this interpretation to be erroneous under Georgia law, this actually presents no Federal question. As has been said by the United States Supreme Court:

> " 'Without any doubt it rests with each State to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law. *Callan* v. *Bransford,* 139 U.S. 197; *Brown* v. *Massachusetts,* 144 U.S. 573; *Jacobi* v. *Alabama,* 187 U.S. 133; *Hulbert* v. *Chicago,* 202 U.S. 275, 281; *Newman* v. *Gates,* 204 U.S. 89; *Chesapeake & Ohio Railway Co.* v. *McDonald,* 214 U.S. 191, 195.' *John* v. *Paullin,* 231 U.S. 583, 585, 58 L. Ed. 381, 382, 34 S. Ct. 178. ' (W) hen as here there can be no pretence that the (state) Court adopted its view in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any federal question, this Court accepts the decision whether right or wrong.' *Nickel* v. *Cole,* 256 U.S. 222, 225, 65 L. Ed. 900, 905, 41 S. Ct. 467."
>
> Cited with approval *Wolfe* v. *North Carolina,* 346 U.S. 177, 195, 80 S. Ct. 1482, 4 L. Ed. 2d 1650, 1662 (1960).

[3] See Part II *infra.* p. 10 for a discussion of the points of law involved in the decision of the Supreme Court of Georgia.

The petitioners, in their petition for writ of certiorari, attempt to present to this Court for review the correctness of the trial court's ruling on demurrers in this case. It has been consistently held by this Court that this type of issue, although present in the State case, when not passed upon by the State Supreme Court because of procedural or substantive defects in presenting the issue, will not be reviewed by the United States Supreme Court. Cf. *Wolfe* v. *N. C.*, 346 U.S. 177, 80 S. Ct. 1482, 40 L. Ed. 2d 1650 (1960), *Herndon* v. *Ga.*, 295 U.S. 441, 35 S. Ct. 794, 79 L. Ed. 1531 (1935).

As was succinctly stated by Mr. Justice Harlan in his dissenting opinion, in *Evans* v. *Newton*, 383 U.S. ___, 86 S. Ct. ___, 15 L. Ed. 2d 373, 386 (1966):

> "This plainly contravenes the established rule that this Court will not reach constitutional questions if their decision can reasonably be avoided. *Peters* v. *Hobby*, 349 U.S. 331, 99 L. Ed. 1129, 75 S. Ct. 790; *United States* v. *Rumely*, 345 U.S. 41, 97 L. Ed. 770, 73 S. Ct. 543; *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 553, 9 L. Ed. 773, 826. Application of that doctrine is especially called for here where decision should require precise knowledge of the factual details and nuances that only time and a complete record can bring into focus. Dismissal of the writ should thus follow."

The decision of the Supreme Court of Georgia on a purely Georgia procedural matter is definitive. Even though there are assertions made by the petitioners in this case that such a decision is a wrong interpretation of Georgia law, it is impossible for a State Supreme Court to make a wrong interpretation of State law. The United States Supreme Court is "bound by the decision of that Court [Supreme Court of a State] as though the

meaning as fixed by the court had been expressed in the statute itself in specific words." *Guaranty Trust Co.* v. *Blodgett,* 287 U.S. 511, 513, 53 S. Ct. 244, 77 L. Ed. 453, 465 (1932). Just as this Court is the supreme authority for determining the meaning of all Federal laws, so the Georgia Supreme Court is the supreme authority for determining the meaning of all Georgia law, provided that Federal constitutional issues are not involved.

> "This decision upon a matter of practice under State procedure, did not draw in question any right complainant had under the Constitution or laws of the United States. It afforded no basis for the contention that her right to be heard in her own behalf was denied." *Thorington* v. *City Council of Montgomery,* 147 U.S. 490, 494, 13 S. Ct. 394, 37 L. Ed. 252, 253 (1893).

For these reasons it is respectfully submitted that the decision of the Supreme Court of Georgia presents no substantial Federal question for review by this Court and the petition for writ of certiorari should be denied.

II. There Were Adequate Grounds to Substantiate the State Court Decision Under the Laws of Georgia Involving No Federal Question, and This Court Should Refuse to Grant the Writ of Certiorari.

As has been pointed out in Part I of this section of respondents' brief in opposition, the actual decision of the Supreme Court of Georgia was based solely on the proposition that since the Enumeration of Errors was not filed within the time provided by law, the appeal must be dismissed. This is a decision on Georgia procedural law, involving no Federal constitutional rights.

The reasons for this decision of the Supreme Court of Georgia may appear somewhat obscure to one who is not

familiar with the history of appellate procedure in Georgia, but becomes apparent when examined in light of statutory enactments and prior judicial decisions. Prior to August 1, 1965, review of lower court decisions was made by the appellate courts of Georgia by common law writ of error as it had been for some one hundred and twenty years, since the establishment of the Supreme Court of Georgia. However, at the 1965 Session of the General Assembly of Georgia, there was enacted the Georgia Appellate Procedure Act of 1965, Ga. Code Anno. Chap. 6-7 through 6-12 (Ga. Laws, 1965, p. 18, 240). Although this Act was apparently an attempt to combine the best features of the Georgia system of writ of error with the system of appeals used underneath the Federal Rules, in retrospect it appears that the effect of it may have been to combine the worst features of the two systems. Under the new Act, an appeal is taken by the filing of a Notice of Appeal. (Ga. Code Anno. 6-802, Ga. L. 1965, p. 21). However, apparently as a vestige of the old Bill of Exceptions, the Act in Section 14 also provides that there shall be filed with the Clerk of the appellate court an "Enumeration of the Errors Relied Upon." Ga. Code Anno. 6-810, (Ga. L. 1965, p. 244). This Section, as originally enacted, provided that the Enumeration of Errors should be filed "as a part of the brief" in the appellate courts. When opposition to this requirement was expressed by the Chief Justice of the Supreme Court, the Section was amended prior to the time it became effective, so as to provide that the Enumeration of Errors be filed in the appellate court and simultaneously in the trial court "at the time the brief is filed." (See Leverett, "The Appellate Procedure Act of 1965," 1 Ga. St. B. J. 478, 479). Under the Rule 20 of the Supreme Court of Georgia, the brief of the appel-

lant must be filed within fifteen (15) days after the docketing of the case in the Supreme Court. Ga. Code Anno. 24-4520, 220 Ga. 912 (1965). The holding of the Supreme Court in both the instant case and in previous cases decided under the new Appellate Procedure Act, such as *Stanford* v. *Evans, Reed & Williams,* 221 Ga. 331, 145 S.E. 2d 504 (1965), *Close* v. *Walker Land Corp.,* 221 Ga. 329, 145 S.E. 2d 245 (1965), and *Davenport, et al.* v. *Hall, Mayor, et al.,* 221 Ga. 543, 146 S.E. 2d 569 (1965) was to the effect that the Enumeration of Errors must be filed within this 15-day period, even though an extension of time is actually given for the filing of the brief.

The basis for the Motion for Re-Hearing by the petitioners in this case, and also the primary basis of the petition for writ of certiorari, seems to be that since the Enumeration of Errors was filed at the time the brief was, the requirements of the law were satisfied. This argument would be logically appealing except that it fails to recognize the essential difference between a brief and an Enumeration of Errors under Georgia law, and the rules of the Georgia Supreme Court. A brief is a document required by the rules of the Supreme Court to assist the Court, with citations of authority and argument to decide the issues before it. Under the present rules of the Georgia Court, failure to file briefs does not affect the appeal at all, but will be dealt with as a contempt of court (Ga. Code Anno. 24-4546, Rule 46, Ga. S. Ct., 220 Ga. 919 (1965). But cf. Rule 15 (b) of the Court of Appeals of Georgia, Ga. Code Anno. 24-3615, 111 Ga. App. 889 (1965) amended 18 Ga. L. Rept. No. 46, where failure to file a brief is an "abandonment of the appeal"). There is no requirement in the statute law

of Georgia that a brief be filed in the Supreme Court at all. Indeed, the Supreme Court could, by rule, eliminate completely the requirement of filing briefs. The brief in the Supreme Court is not a part of the record in the case, and is kept separately from the record by the Clerk of the Court.

On the other hand, the Enumeration of Errors is not for the purpose of assisting the Court to decide the issues before it, but rather, is the document which determines the issues before the Court. The Enumeration of Errors is a document required by statute law to be filed with the Court (Section 14, Appellate Procedure Act, Ga. Code Anno. 6-810, Ga. L. 1965, p. 244). When it is filed it becomes part of the record in the case and failure to file it is ground for dismissal of the appeal. Sec. 13 (b) (4) Appellate Procedure Act, Ga. Code Anno. 6-809 (b) (4), Ga. L. 1965, p. 243. The reason for the importance attached to the Enumeration of Errors under the Appellate Procedure Act is obvious, because "since Assignments of Error are abolished, the filing of the Enumeration of Errors in the appellate court is essential, for it is in the Enumeration of Errors relied upon . . . that the court knows what is before it." Leverett, "The Appellate Procedure Act of 1965," 1 Ga. St. B.J. 45, 458 (1965).

When this distinction between a brief and an Enumeration of Errors is considered, it is apparent that the decision of the Supreme Court of Georgia in the instant case was correct. Since a brief is a document to assist the court only, the court can determine when it can be filed. If it is filed 20 or 30 days after the docketing of a case, or even after oral argument before the court, this late filing does not affect the merits of the appeal. If such late filing has been authorized by one of the Justices of the court, as was done in the instant case, this, of

course, would tend to negate or eliminate any contempt of court.

On the other hand, the Enumeration of Errors must be filed at a fixed time in order that both the court and the appellees may be appraised of the contentions made by the appellant. This fixed time is prescribed by Section 14 of the Appellate Procedure Act, Ga. Code Anno. 6-800, Ga. L. 1965, p. 243, as being "at the time the brief is filed." Under Rule 20 of the Supreme Court of Georgia, the brief "must be filed with the Clerk within fifteen (15) days after the docketing of the case in this court." Ga. Code Anno. 24-4520, 220 Ga. 912. (1965). Hence, it is apparent that failure to file the Enumeration of Errors within the 15 days after docketing is cause for dismissal of the appeal under Section 13 of The Appellate Procedure Act, Ga. Code Anno. 6-800, Ga. L. 1965, p. 29, 243.

Although Section 6 of The Appellate Procedure Act, Ga. Code Anno. 6-804, Ga. L. 1965, p. 2, might be construed as authority for the Supreme Court, or any Justice thereof, to extend the 15 day filing period for the Enumeration of Errors, Rule 7 of the Georgia Supreme Court, Ga. Code Anno. 24-4507, 220 Ga. 910 (1965), provides: "This Court will issue no order granting extensions of time as provided in the Appellate Procedure Act of 1965 (Ga. L. 1965, pp. 18, 21, § 6)." It would appear that the only way this rule could be altered would be through action of the entire court, and not the unilateral action of any justice. Of course, in the instant case, it is doubtful there was even any attempt at such unilateral action, as the petitioners make no contention that there was any express extension of time for the filing of Enumeration of Errors by the Chief Justice.

The foregoing summary of the Georgia Appellate Procedure may appear somewhat involved, but is intended to make it clear that the petitioners in this case were victims of "progress" and "reform" and their own inattention to the requirements of Georgia Statute Law and the Rules of the Supreme Court of Georgia. These are results which, though unfortunate, present no Federal Constitutional issue.

In addition to the statutory construction relied upon by the Georgia Supreme Court in its decision, it should also be observed that there was another Georgia procedural point which, although not expressly passed upon by the Georgia Supreme Court, clearly required a dismissal of the State appeal. This point was that the Notice of Appeal was not filed from the trial court to the Supreme Court of Georgia within the time provided by law. This is clear from an examination of the relevant provisions of the Georgia Appellate Procedure Act. Ga. Code Anno. Chap. 6-7 through 6-12, Ga. L. 1965, pp. 18 et seq., pp. 240 et seq.

Section 5 of the Appellate Procedure Act, Ga. Code Anno. 6-803, Ga. L. 1965, p. 211, provides:

> "A Notice of Appeal shall be filed within thirty (30) days after entry of the appealable decision or judgment complained of . . ."

while Section 18 (b) of the Appellate Procedure Act, Ga. Code Anno. 6-903, Ga. L. 1965, p. 32, defines the "entry" of a judgment as being the "filing with the Clerk of a judgment signed by the Judge."

To determine whether the Notice of Appeal was filed within the time provided by law in the instant case, it is necessary to briefly review the order of the trial judge

in this case and the sequence of events which occurred in the trial court.

On July 28, 1965, the trial court entered the following order:

> "After argument and consideration, the general demurrers of each of the defendants to the petition, as amended, are hereby sustained with twenty (20) days' leave to amend. If not amended within said time, the suit is dismissed." (R. 113).

This order was filed with the Clerk of Fulton Superior Court on the same day, July 28, 1965, and thus constituted the "entry of such judgment" within the meaning of Section 18 (b) of the Appellate Procedure Act, Ga. Code Anno. 6-903, Ga. L. 1965, p. 32. The petitioners in the instant case filed no amendment to their petition within the twenty (20) day period permitted by the trial court's order. The appellants filed no Notice of Appeal within thirty (30) days of the entry of the order of July 28, 1965, but, rather, beyond this thirty (30) days period, on August 30, 1965, filed a Notice of Appeal to the Georgia Supreme Court. This Notice of Appeal, of course, would be within thirty (30) days from August 17, 1965, the date of the automatic dismissal under the order of July 28, 1965.

However, under these circumstances in this case, it is submitted that Section 5 of the 1965 Appellate Procedure Act, Ga. Code Anno. 6-803, Ga. L. 1965, p. 21, requiring a "Notice of Appeal" to "be filed within thirty (30) days after entry of the appealable decision or judgment complained of," by its express terms, would make the appeal in this case too late and subject to dismissal by the Georgia Supreme Court, under the provisions of Section 13 (b) (1) of the Appellate Procedure Act, Ga. Code Anno. 6-809 (b) (1), Ga. L. 1965, p. 29, 243.

It appears that this result is contrary to the result which would have been reached prior to the effective date of the Appellate Procedure Act, because, in similar situations, both the Supreme Court and the Court of Appeals of Georgia had held that the time for filing a Bill of Exceptions was thirty (30) days from the date of the automatic dismissal of the petition under the order of the trial court. See *Peyton* v. *Rylee,* 191 Ga. 40, 11 S.E. 2d 195 (1940); *Luke* v. *Green,* 201 Ga. 482, 40 S.E. 2d 85 (1946); cf. *Northside Manor, Inc.* v. *Vann,* 219 Ga. 298, 133 S.E. 2d 32 (1963). See also, *Rochester Capital Leasing Corp.* v. *Christian,* 109 Ga. App. 818, 137 S.E. 2d 518 (1964), and *Echols* v. *Time Motor Sales Inc.,* 111 Ga. App. 554, 142 S.E. 2d 324 (1965).

However, it should be noted that all of these decisions, of both the Supreme Court and the Court of Appeals, were decided when Section 6-902 of the Georgia Code Annotated provided "Bills of Exception shall be tendered to any judge authorized by law to certify them, within thirty (30) days from the date of the decision complained of." Code, Sec. 6-902, was, of course, repealed by Sec. 21 (b) of the Appellate Procedure Act, Ga. Code Anno. 6-902, Ga. L. 1965, p. 37.

It would thus appear that although the Notice of Appeal in this case was within thirty (30) days from "the date of the decision complained of," i.e., automatic dismissal of the petition, it still was not filed within thirty (30) days from the "entry" of the appealable decision.

Although this would appear to be somewhat of an anomalous result to be reached under an Act "reforming" Appellate Procedure in Georgia, it is a result that

cannot be avoided under the plain language used by the General Assembly of Georgia.

From the foregoing, it is apparent that the decision of the Supreme Court of Georgia rested on adequate State grounds, and since no Federal questions were involved, the petition for a writ of certiorari should be denied. This is particularly true since an examination of pertinent Georgia law shows that there were equally valid grounds requiring the dismissal of the appeal in the State Court, which would, in all likelihood, be the basis of the decision in the event of a reversal.

III. The Petition for Writ of Certiorari Should Be Denied Because the Issues Presented by the Original Appeal to the Georgia Supreme Court Are Now Moot.

It is further the contentions of the respondent in this case that all of the issues presented by the original suit in the Georgia Court have been rendered moot by subsequent action of the General Assembly of Georgia, and that none of the relief prayed for in the original petition can be granted. To illustrate this point it is necessary to examine the prayer for relief as contained in the rewritten petition of plaintiffs as amended (R. 73). It should be noted that these are the only prayers for relief remaining in the case, since the prayers of the original petition were stricken, and none of the subsequent amendments of the petitioners contained any prayers for relief.

First, it should be noted that prayers (a) and (f) are purely formalistic, asking for issuance of process and a prayer for general relief. (R. 73)

The first prayer having any substance is prayer (b)

(R. 73), which is to the effect that the petitioners ask "that a rule nisi issue to the defendants herein requiring them to show cause on a day certain before this court why a permanent order should not issue restraining and enjoining them from any declaration of the results of the special election held on June 16, 1965, and particularly, that they be permanently restrained and enjoined from any action or the assumption of any office of any kind or nature or the expenditure of public funds for the purposes implicit in the referendum referred to herein."

It is clear that under this prayer for relief the petitioners are seeking injunctive relief having to do with action of the respondents taken pursuant to the referendum election referred to in the petition. An examination of the Metropolitan Atlanta Rapid Transit Authority Act of 1965 (Ga. Laws 1965, p. 2248, Appendix p. 33), show that the referenda referred to were conducted pursuant to Section 6 (b) of the Act. However, it should be noted that the cited provision of the Metropolitan Atlanta Rapid Transit Authority Act has been repealed by action of the General Assembly of Georgia. See Act No. 403 (Senate Bill 171, 1966 Session of the General Assembly, approved by the Governor of Georgia on March 4, 1966). (See Appendix to Response, p. 30).

Since there is no further need for the referendum and the provisions of law authorizing it have been repealed, any issues pertaining to the referendum election are now moot.

It should be noted that all of the other prayers of the petition are concerned with the effect and the validity of the referendum election. Prayer (c) is that: "This Court issue a declaratory judgment and decree to the

effect that the election held on June 16, 1965, is illegal ab initio, void and of no force and effect." (R. 73)

Prayer (d) is: "That a temporary restraining and enjoining order issue, prohibiting the taking of any office or action, or the expenditure of any public money under the referendum referred to in the allegations herein, until further order of court," (R. 73)

Prayer (e) is: "That this Court permanently enjoin and restrain the defendants and/or any of them from enforcing said constitutional amendment, Metropolitan Atlanta Rapid Transit Authority Act thereunder, and the said election pursuant thereto, as being contrary to law, contrary to the Constitution of Georgia, and the Constitution of the United States, in all the particulars alleged in this petition." (R. 73)

A careful examination of Act No. 403, 1966 Session (Appendix, p. 30), shows that the General Assembly has eliminated completely the necessity for the referendum elections, which were attacked in the original suit. The General Assembly of Georgia has confirmed participation in the Metropolitan Atlanta Rapid Transit Authority "by the counties of Fulton, DeKalb, Clayton, Gwinnett and the City of Atlanta," and the nonparticipation in the Authority by Cobb County. Hence, the issue presented by the original petition has been removed from the Georgia courts, and from this Court, by reason of action of the Georgia General Assembly.

It also should be noted that the Metropolitan Atlanta Rapid Transit Authority created by Section 4 of the Act (Ga. L. 1965, p. 2246, Appendix, p. 33) is not a party to the instant action, and has never been. The Interim Study Commission of the Metropolitan Atlanta

Rapid Transit Authority intervened in the trial court. However, it ceased to exist by operation of law on January 3, 1966, prior to the filing of the petition for writ of certiorari in this case.

It also should be noted that the only duties imposed upon three of the defendants in this case, to-wit: the Ordinaries of Fulton, DeKalb and Gwinnett Counties, the Hon. Eugene Gunby, the Hon. Katherine Mann, and the Hon. Alton W. Tucker, were to conduct the referenda elections referred to. Since the necessity for these referenda has been eliminated by legislative action, these respondents have no further interest in the litigation.

The duties imposed upon the other respondents, to-wit: the Commissioners of Fulton County, the Commissioners of DeKalb County, and the Mayor and Members of the Board of Aldermen of the City of Atlanta, are the appointment of members to the Metropolitan Rapid Transit Authority. These appointments have already been made, as shown by certifications from each of the governing authorities involved, attached as an appendix to this response (Appendix, pp. 24-29).

Hence, it is clear that no relief can be granted in this action as to any of the respondents herein. For these reasons, all of the issues presented by the original petition are now moot, and, accordingly, the petition for writ of certiorari should be denied.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the petition for writ of certiorari should be denied.

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PROOF OF SERVICE

I, JOHN TYE FERGUSON, Attorney for the Respondents in the foregoing petition for Writ of Certiorari, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 17 day of March, 1966, I served a copy of the foregoing Brief In Opposition upon the petitioners herein as follows:

By mailing a copy thereof in a duly addressed envelope, with first class postage prepaid to their Attorney of Record as follows:

G. Seals Aiken
Suite 1409-10 Candler Building
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John Tye Ferguson

JOHN TYE FERGUSON
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APPENDIX

Minutes of Board of Aldermen of City of Atlanta, July 6, 1965, appointing members to the Board of of Directors of the Metropolitan Atlanta Rapid Transity Authority.

OFFICE OF THE MAYOR

July 1, 1965

Ivan Allen, Jr.

Mr. J. J. Little
Clerk of the Board of Aldermen
City of Atlanta, Georgia

Dear Mr. Little:

In accordance with Section 6 of Senate Bill 102 enacted by the Georgia Legislature at its 1965 Session and pertaining to the Metropolitan Atlanta Rapid Transit Authority, I am hereby nominating the following as members of the Board of Directors of The Metropolitan Atlanta Rapid Transit Authority:

Mr. Richard H. Rich—for a term of four years commencing January 1, 1966.

Mr. Mills Lane—for a term of three years commencing January 1, 1966.

Mr. L. D. Milton—for a term of two years commencing January 1, 1966.

Mr. Rawson Haverty—for a term of one year commencing January 1, 1966.

It is requested that these nominations be submitted to the Board of Aldermen for election at its meeting on July 6th.

Very truly yours
/s/ Ivan Allen Jr.

MAYOR ALLEN then recognized Alderman Knight who seconded the nominations of the above for nominees to the Board of Directors of the Metropolitan Rapid Transit Authority. These four members were then elected for the above stated terms of office by the following roll call vote of the Board of Aldermen: YEA: Aldermen Dennis, Griggs, Gilliam, Flanigen, Knight, Vickers, Wood, Leftwich, White, Freeman, Turner, Farris, Summers, Cook, Fowlkes. (15). NAY: none (0).

STATE OF GEORGIA }
}CITY OF ATLANTA
COUNTY OF FULTON }

I, J. P. Green, do hereby certify that I am the duly appointed Deputy Clerk of the Board of Aldermen, City of Atlanta, Georgia and as such am in charge of keeping the minutes and records for said Body; that the attached sheet is a true and correct copy of a portion of page 278 of Minute Book No. 10 of the Minutes of the Board of Aldermen meeting held on July 6, 1965 in the City of Atlanta, Georgia. Lines 17 through 28 is a copy of the Mayor's letter nominating Richard H. Rich, Mills Lane, L. D. Milton and Rawson Haverty to the Board of Directors of THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY. Lines 29 through 31 explains the second of this nomination and the subsequent election of the Board of Directors.

The attached and foregoing is the same as shown on the original record, of record and on file in my said office.

GIVEN under my hand and seal of office on this the 10th day of November, 1965.

J. P. GREEN
Deputy Clerk of the Board of Aldermen

Minutes of the Board of Commissioners of DeKalb County, July 6, 1965, appointing members to the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority.

The Commission discussed the appointments of the Interim Study Rapid Transit Committee members from DeKalb County and agreed at this time that these appointments be made permanent members of the Board of Authority for Rapid Transit.

A motion was then made by Commissioner Haynes, seconded by Commissioner Evans and unanimously passed to approve the appointment of Doctor Sanford Atwood and Mr. Roy A. Blount, who were appointed by the Commission on May 17, 1965 as members of the Interim Study Committee of Rapid Transit, as permanent members of the Board of Metropolitan Atlanta Rapid Transit Authority.

I, the undersigned, Glenn C. Blaisdell, Clerk of the Board of Commissioners of Roads and Revenues, DeKalb County, Georgia, DO HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by said Board in meeting lawfully attended on 6th day of July, 1965. And same appears in Minutes of said Board this 10th day of November, 1965.

GLENN C. BLAISDELL
Clerk, Board of Commissioners
of Roads & Revenues,
DeKalb County, Ga.

Minutes of the Board of Commissioners of Roads and Revenues of Fulton County, Georgia, December 15, 1965, appointing members to the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority.

A RESOLUTION

A RESOLUTION APPOINTING MEMBERS TO THE BOARD OF DIRECTORS OF THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY.

WHEREAS, the 1965 Session of the General Assembly of Georgia did pass an Act approved March 10, 1965, and known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," (Ga. Laws 1965, p. 2243); and

WHEREAS, under the provisions of Section 6 of said Act, the Board of Directors of the Authority is composed of ten (10) members, two (2) of whom shall be residents of Fulton County, to be appointed by the local governing body thereof;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF ROADS AND REVENUES OF FULTON COUNTY, AS FOLLOWS:

1. M. C. BISHOP is hereby appointed a member of the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority, for a term of office commencing January 1, 1966, and expiring December 31, 1968.

2. WILLIAM A. PULVER is hereby appointed a member of the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority, for a term of office commencing January 1, 1966, and expiring December 31, 1966.

3. The Clerk of this Commission is hereby authorized and directed to furnish a copy of this Resolution to M. C. Bishop, William A. Pulver, and the Interim Study Committee of the Metropolitan Atlanta Rapid Transit Authority.

I, Frank R. Fling, do hereby certify that the above and foregoing resolution was unanimously adopted by the Board of Commissioners of Roads and Revenues in a special meeting held December 15, 1965, same being recorded in Minute Book Q-3.

This the 28th day of December, 1965.

FRANK R. FLING, Clerk.

Minutes of Commissioners of Roads and Revenues of Gwinnett County, June 25, 1965, appointing members to the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority.

A RESOLUTION

Office of the Board of County Commissioners

GWINNETT COUNTY, GEORGIA

WHEREAS, the General Assembly of Georgia did, at its 1965 Session, adopt legislation known as Senate Bill No. 102, cited as the Metropolitan Atlanta Rapid Transit Authority Act of 1965; and

WHEREAS, upon proper Resolution and legal advertisement Special Referendum was held in Gwinnett County on June 16th, 1965, and majority of those voting in said Referendum voted in favor of participating in the Authority.

NOW, THEREFORE, BE IT RESOLVED that the

Commissioners of Roads and Revenues of Gwinnett County shall appoint Kenneth A. McMillon to the Board of the Metropolitan Atlanta Rapid Transit Authority to represent Gwinnett County. During the remainder of the year 1965 Mr. McMillon will serve on the Interim Study Commission of the Metropolitan Atlanta Rapid Transit Authority and on January 3, 1966 he will begin serving on the Metropolitan Atlanta Rapid Transit Authority and will continue to serve for a period of two (2) years.

This the 25th day of June, 1965.

COMMISSIONERS OF ROADS AND REVENUES

W. RAY MORGAN, *Chairman*

W. R. PRUITT, *Vice-Chairman*

O. F. THOMPSON,
Clerk and Member

ATTEST:
O. F. THOMPSON, *Clerk*

I, O. F. THOMPSON, do hereby certify that the attached and foregoing resolution of June 25, 1965 was unanimously adopted by the Board of Commissioners of Roads and Revenues in a Special Meeting held on June 25, 1965, same being recorded in Minute Book "I", Page 129.

This the 1st day of July, 1965.

O. F. THOMPSON, Clerk.

Act 403 (S.B. 171), 1966 Session of the General Assembly of Georgia, Approved March 4, 1966.

AN ACT

To amend the Metropolitan Atlanta Rapid Transit Authority Act of 1965 (Ga. Laws 1965, p. 2243) by repealing certain provisions therein with respect to the Interim Study Commission and the holding of referenda as a prerequisite for further participation in the Authority by the local governing bodies of the local governments within the metropolitan area; by making provision for the further participation in the Authority by any local governing body which may have declined membership and participation in the Authority; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Section 2 (b) and Section 5 of the Metropolitan Atlanta Rapid Transit Authority Act of 1965 (Ga. Laws 1965, p. 2243), relating to the Interim Study Commission, are hereby repealed. In repealing these provisions, it is the intent of the General Assembly to recognize that the Interim Study Commission has served the transitional purpose for which it was created, and that it has now been succeeded by the Board of Directors as contemplated by Section 5 (d) and 6 (c).

Section 2. Section 6 (b) and 6 (c) of the Metropolitan Atlanta Rapid Transit Authority Act of 1965, relating to referenda as a prerequisite for further participation in the Authority by the local governing bodies of the local governments within the metropolitan area, are hereby repealed. In repealing these provisions, it is the

intent of the General Assembly to recognize that the referenda held pursuant thereto served the purpose originally contemplated and to confirm participation in the Authority by the Counties of Fulton, DeKalb, Clayton and Gwinnett and the City of Atlanta, the nonparticipation in the Authority by Cobb County, and the procedures by which this participation and nonparticipation have been effected.

Section 3. A new Section 6 (b) is hereby enacted to read as follows:

"Section 6 (b). Any local government may initially decline membership on the Board and further participation in the Authority. Where any local government has initially declined membership on the Board and further participation in the Authority, it may at any time thereafter reclaim its membership on the Board and participate further in the Authority by a request from the local governing body thereof to the Board for that purpose. Before making such a request, such local governing body shall submit to the qualified voters thereof in a referendum, to be prescribed by local Act, the question of whether it should participate further in the Authority or not. If it appears that a majority of those voting in such referendum vote in favor of further participation in the Authority, and if it appears that no financial advantage over other participating local governments has accrued or will accrue to it by having previously declined participation, the Board shall approve such request. Thereupon such local government shall be a participant in the Authority and its rights and responsibilities

shall, insofar as possible, be the same as if it had participated in the Authority from its beginning."

In enacting this provision it is the intent of the General Assembly to recognize that Cobb County has declined membership on the Board of Directors and further participation in the Authority, and its purpose is to provide a procedure whereby Cobb County may, on a basis that is fair to all participating local governments and to Cobb County, assume the participation originally contemplated.

Section 4. All laws and parts of laws in conflict with this Act are hereby repealed.

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY

ACT NO. 78 (S.B. NO. 102)

1965
SESSION
OF THE
GENERAL ASSEMBLY

An Act to create the Metropolitan Atlanta Rapid Transit Authority; to provide for a short title; to provide for definitions; to provide for legislative findings and declaration of policy; to provide for creation and organization; to provide for an interim study commission; to provide for a board of directors; to provide for purposes; to provide for general powers; to provide for fares, rates, rentals and charges; to provide for revenue bonds; to provide for equipment trust certificates; to provide for the power of eminent domain; to provide for removal and relocation of utility structures, etc.; to provide for competitive bidding on contracts, etc.; to provide for conflict of interests; to provide for financial accounts, audits and reports; to provide for budgets and budgeting procedures; to provide for an engineering survey; to provide for insurance on leased property; to provide for rules and regulations; to provide for bargaining; to provide for the printing and distribution of reports and documents; to provide for tax and regulatory exemptions; to provide for tort liability and insurance; to provide that the Authority shall have no power to impose any tax; to provide for local government participation; to provide for other matters relative to the foregoing and relative to the general purpose of this Act; to provide for severability; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. Short Title. This Act shall be known, and may be cited, as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965."

Section 2. Definitions. The following words and terms shall have the meaning indicated unless the context shall clearly indicate a different meaning:

(a) Authority. The Metropolitan Atlanta Rapid Transit Authority created by section 4.

(b) Interim Study Commission. The temporary governing body of the Authority as provided in section 5.

(c) Board. The Board of Directors and governing body of the Authority as provided in section 6.

(d) Metropolitan Area. The territory comprising the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett, including the City of Atlanta, but excluding the territory of any local government which may decline membership on the Board as hereinafter provided.

(e) Local Government. Any one of the counties of Fulton, DeKalb, Cobb, Clayton, or Gwinnett, or the City of Atlanta, which is a part of the metropolitan area, as a political subdivision of this State.

(f) Local Governing Body. The board of county commissioners, the mayor and board of aldermen, or similar official governing body of the local governments within the metropolitan area.

(g) Transportation System. All property, real or personal, useful for the public transportation of passengers for hire, including but not limited to power plants, substations, terminals, garages, bridges, tunnels, subways, elevated rails, aerial structures, monorails, rail motive power, trains, railroad passenger cars and equipment, belt conveyors, inclines, carbarns, street cars, buses, rails, lines, poles, wires, stations, concessions, off-street parking and other facilities for the comfort, safety and convenience of transit passengers, rights and licenses therefor, and rights to provide group and party services.

(h) Transportation Project. Any unit, structure, facility or undertaking in any combination which may be a component part of a transportation system.

(i) Rapid Transit System and Project. A transportation system the primary function of which is to provide a mass transportation service principally by the use of high speed vehicles traveling on rights-of-way fully protected from other vehicular and pedestrian traffic, a secondary function of which is to provide a feeder-type mass transportation service therefor, and an incidental function of which is to

provide facilities necessary thereto and other facilities for the comfort, safety and convenience of its passengers. A rapid transit project is any transportation project which may contribute to the development or operation of a rapid transit system.

(j) Cost of a Rapid Transit System or Project. According to accepted principles of accounting, the total cost, paid or incurred, to study, plan, design, finance, acquire, construct or otherwise develop the component parts of a rapid transit system or project to a normal operating or revenue producing conditions, including the capitalization of expenses, direct and indirect, paid or incurred, in connection therewith.

(k) Federal Government. The United States of America, or any department, agency or instrumentality thereof.

Section 3. Legislative Findings and Declaration of Policy. The territory comprising the counties of Fulton, DeKalb, Cobb, Clayton, and Gwinnett, including the City of Atlanta, has developed, and continues to develop, phenomenally into a metropolitan area with a common interest in the cultural, social and economic well-being of the people therein and the development of the educational, commercial and industrial resources thereof. There exists in this metropolitan area serious traffic conditions and congestions and serious mass transportation problems which impede, and will increasingly impede, the development of these common interests toward their fullest potential. Concerted governmental action is needed to alleviate such traffic conditions and congestion, supply deficiencies in mass transportation, coordinate and balance the transportation facilities operating therein, and otherwise provide a sounder basis for the development of traffic patterns and control. The development of a rapid transit system through a joint instrumentality of the local governments within the metropolitan area is a reasonable approach to the aforesaid needs and problems. The cultural, social and economic well-being of the people in the metropolitan area and the development of the educational, commercial, and industrial resources thereof are matters of public interest and concern through-

out the State. Accordingly, it is the public policy of this State, as a matter of public health, safety, convenience and welfare, to promote the establishment of such a joint instrumentality, encourage participation therein by the local governments involved, facilitate the accomplishment of its purposes and bring about solutions for the aforesaid needs and problems.

Section 4. Creation and Organization. There is hereby created a public body corporate to be known as the Metropolitan Atlanta Rapid Transit Authority as a joint public instrumentality of the City of Atlanta and the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett for the purposes hereinafter provided.

Section 5. Interim Study Commission.

(a) There is hereby created the Interim Study Commission of the Metropolitan Atlanta Rapid Transit Authority which shall be the governing body of the Authority until the activation of the Board of Directors of the Authority as hereinafter provided. The Interim Study Commission shall be composed of eleven members. Four members shall be residents of the City of Atlanta to be nominated by the Mayor and elected by the Board of Aldermen; two members shall be residents of DeKalb County to be appointed by the local governing body thereof; two members shall be residents of Fulton County to be appointed by the local governing body thereof; one member shall be a resident of Cobb County to be appointed by the local governing body thereof; one member shall be a resident of Clayton County to be appointed by the local governing body thereof; and one member shall be a resident of Gwinnett County to be appointed by the local governing body thereof. Each member shall serve from the time of his appointment until the expiration of the Interim Study Commission as hereinafter provided.

(b) For the purposes set forth in section 7, the Interim Study Commission may exercise the powers of the Authority prescribed in section 8 (e), 8 (f) and 8 (k), the power to perform any duty imposed on the Board, the power to

appoint, select and employ officers, agents, and employees, including engineering, architectural and construction experts, fiscal agents and attorneys, which may be necessary for the exercise of the aforesaid powers, and allow them suitable compensation, and the power to contract for, purchase or otherwise acquire the services, supplies and equipment which may be necessary for the exercise of the aforesaid powers. The intent is that for the purposes of the Authority, the Interim Study Commission shall function as its governing body in the same way that the Board might function under this Act were it duly activated except that the Interim Study Commission shall be limited in the exercise of the powers of the Authority to those set forth above. As to the exercise of such powers, and as to the organization of the Interim Study Commission, the qualification of its members and their duties, as a body and as individual members, all the provisions of this Act relating to the Board and its members shall apply thereto to the extent necessary to place the Interim Study Commission in the same position as the Board except that the Interim Study Commission shall be limited in the exercise of the powers of the Authority to those set forth above.

(c) The local governing body of each local government in the metropolitan area is authorized to make such appropriation of public funds to the Authority to defray the expenses incurred by the Interim Study Commission as it may deem appropriate. The authority herein granted shall be subject to and limited by any local act heretofore or hereafter enacted more particularly applicable to the local governing body of any local government.

(d) When the Board of Directors of the Authority is duly activated as hereinafter provided, the Interim Study Commission shall by operation of law cease to exist and simultaneously therewith the Board of Directors shall become the governing body of the Authority with the capacity to exercise all powers granted to the Authority under this Act and there shall be no lapse in the continuity of the government of the Authority or its affairs.

Section 6. Board of Directors.

(a) The Board of Directors of the Authority shall be composed of eleven members. Four members shall be residents of the City of Atlanta to be nominated by the Mayor and elected by the Board of Aldermen; two members shall be residents of DeKalb County to be appointed by the local governing body thereof; two members shall be residents of Fulton County to be appointed by the local governing body thereof; one member shall be a resident of Cobb County to be appointed by the local governing body thereof; one member shall be a resident of Clayton County to be appointed by the local governing body thereof; and one member shall be a resident of Gwinnett County to be appointed by the local governing body thereof. Initially, one member appointed by the local governing body of the City of Atlanta and one member appointed by the local governing body of Fulton County shall be appointed for terms of one year; one member appointed by the local governing body of the City of Atlanta, one member appointed by the local governing body of DeKalb County, and one member appointed by the local governing body of Gwinnett County shall be appointed for terms of two years; one member appointed by the local governing body of the City of Atlanta, one member appointed by the local governing body of Fulton County, and one member appointed by the local governing body of Clayton County shall be appointed for terms of three years; and one member appointed by the local governing body of the City of Atlanta, one member appointed by the local governing body of DeKalb County, and one member appointed by the local governing body of Cobb County shall be appointed for terms of four years; all initial terms shall be deemed to have commenced as of January 1, 1966. After the initial terms have expired, appointments shall be for terms of four years except that a vacancy caused otherwise than by expiration shall be filled for the unexpired portion thereof by the local governing body which made the original appointment to the vacant position, or its successor in office. A member of the Board may be appointed to succeed himself.

(b) Prior to making any appointment to the membership of the Board, each local governing body shall submit to the qualified voters thereof in a referendum the question

whether it should participate further in the Authority or not. Such referendum shall be held during the calendar year 1965, in accordance with the procedures prescribed in section 24 (g) insofar as applicable. If a majority of those voting in such referendum vote in favor of further participation in the Authority, the local governing body thereof shall forthwith appoint its members to the Board of the Authority. If a majority of those voting in such referendum vote against further participation in the Authority, the local governing body shall not participate further in the Authority and will be deemed to have declined membership on the Board. In this event the definition of the metropolitan area in section 2 (d) shall be adjusted, the total membership of the Board as prescribed in section 6 (a) shall be reduced accordingly, no provision of this Act shall thereafter be applicable to such local governing body, its local government or the territory thereof, and this Act shall thereafter be read as if every reference to the name thereof had been deleted.

(c) Appointments to the Board shall be made by the local governing bodies in the metropolitan area prior to January 1, 1966. On January 3, 1966, persons duly appointed as members of the Board shall meet at the State Capitol in a joint meeting with the Interim Study Commission. The Interim Study Commission shall first meet and verify the appointive credentials of each person who presents himself as a member of the Board. The Chairman of the Interim Study Commission shall then act as temporary Chairman of the Board, call to order the first meeting of the Board, declare the Board as duly constituted and activated and preside over the election by the Board of its first Chairman. Thereupon the Interim Study Commission shall stand dissolved and the transfer of the government of the Authority shall simultaneously pass to the Board as contemplated in Section 5 (d).

(d) No person shall be appointed as a member of the Board who holds any other public office or public employment except an office in the reserves of the armed forces of the United States or the National Guard; any member who accepts or enters upon any other public office or public

employment shall be disqualified thereby to serve as a member.

(e) A local governing body may remove any member of the Board appointed by it for cause. No member shall be thus removed unless he has been given a copy of the charges against him and an opportunity to be publicly heard in his own defense in person or by counsel with at least ten days' written notice. A member removed from office shall have the right to a judicial review of his removal by an appeal to the superior court of the county of the local governing body which appointed him, but only on the ground of error of law or abuse of discretion. In case of abandonment of his office, conviction of a crime involving moral turpitude or a plea of nolo contendere thereto, removal from office, or disqualification under subsection (d) hereof, the office of a member shall be vacant upon the declaration of the Board. A member shall be deemed to have abandoned his office upon failure to attend any regular or special meeting of the Board for a period of four months without excuse approved by a resolution of the Board, or upon removal of his residence from the territory of the local governing body which appointed him.

(f) Each member of the Board shall be paid by the Authority the sum of fifty dollars for each official meeting of the Board he attends, but he shall not be paid more than five hundred dollars for meetings attended in any one calendar month. A member of the Board shall also be reimbursed for actual expenses incurred by him in the performance of his duties as authorized by the Board. A Board member shall not be allowed employee benefits authorized under Section 8 (b).

(g) The Board shall elect one of its members as chairman and another as vice-chairman for terms to expire on December 31 of each year to preside at meetings and perform such other duties as the Board may prescribe. The presiding officer of the Board may continue to vote as any other member, notwithstanding his duties as presiding officer, if he so desires.

(h) The Board shall hold at least one meeting each month. The Secretary of the Board shall give written notice to each member of the Board at least two days prior to any called meeting that may be scheduled, and said Secretary shall be informed of the call of such meeting sufficiently in advance so as to provide for his giving notice as above. One more than a majority of the total membership of the Board, as it may exist at the time, shall constitute a quorum. A majority of the quorum present at a meeting may exercise all the powers and perform all the duties of the Board, except as otherwise hereinafter provided or as limited by its by-laws, and no vacancy on the original membership of the Board, or thereafter, shall impair the power of the Board to act. All meetings of the Board, its Executive Committee, or any committee appointed by the Board, at which any official business is transacted, shall be open to the public, and the minutes thereof, and the documents and reports made a part of such minutes or referred to therein, shall be public records and open to public inspection in accordance with reasonable rules and regulations prescribed by the Board. The Board shall furnish certified copies of such public records upon written request and upon payment of a reasonable charge therefor.

(i) Notwithstanding any other provisions of this Act, the following actions by the Board shall require the affirmative vote of one more than a majority of the total membership of the Board as it may exist at the time:

(1) The issuance and sale of revenue bonds as contemplated in section 10 or equipment trust certificates as contemplated in section 11.

(2) The purchase or lease of any privately owned system of transportation of passengers for hire in its entirety, or any substantial part thereof, as contemplated in section 8 (c) or 8 (d). Any such purchase or lease shall be made only upon a showing that the acquisition of said public or private system of transportation is essential to the development of a means of rapid transit for the metropolitan areas.

(3) The award of any contract for construction, alterations, supplies, equipment, repairs, maintenance or services

other than professional services, or for the purchase, sale or lease of any property involving $5,000 or more.

(4) The grant of any concession as contemplated in section 14 (f).

(5) The award of any contract for the management of any Authority-owned property or facility as contemplated in section 14 (h).

(j) The Board shall appoint and employ, as needed, a general manager, a secretary, a treasurer, and a general counsel, none of whom may be members of the Board or a relative of a member of the Board, and delegate to them such authority as it may deem appropriate. It may make such by-laws or rules and regulations as it may deem appropriate for its own government, not inconsistent with this Act, including the establishment of an Executive Committee to exercise such authority as its by-laws may prescribe.

(k) The treasurer of the Authority and such other officers and employees of the Authority and such members of the Board as the Board may determine shall execute corporate surety bonds, conditioned upon the faithful performance of their respective duties. A blanket form of surety bond may be used for this purpose. Neither the obligation of the principal or the surety shall extend to any loss sustained by the insolvency, failure or closing of any depository which has been approved as a depository for public funds.

Section 7. Purposes.

The Authority shall exist for purposes of planning, designing, leasing (as lessee), purchasing, acquiring, holding, owning, constructing, improving, equipping, financing, maintaining and administering a rapid transit system within the metropolitan area, and operating same, or contracting therefor, or leasing (as lessor) same for operation by private parties.

Section 8. General powers.

The Authority shall have all powers necessary or convenient to accomplish the aforesaid purposes including, by

way of illustration and not specification, the following:

(a) The powers, privileges and immunities authorized by law for private corporations and for instrumentalities of government. The Authority may sue or be sued in its corporate name but no execution shall be levied on any property of the Authority prior to ninety (90) days from the date of a final judgment against the Authority. The Board may adopt and use a common seal for the Authority and change it at its pleasure.

(b) The power to appoint, select and employ officers, agents and employees, including engineering, architectural and construction experts, fiscal agents and attorneys, allow them suitable compensation and make provisions for group insurance, retirement or other employee benefit arrangements.

(c) The power to acquire, lease (as lessee), purchase, hold, own and use any franchise, property, real or personal, tangible or intangible, or any interest therein, and to sell, lease (as lessor), transfer, or dispose thereof whenever same is no longer required for purposes of the Authority, or exchange same for other property or rights which are useful for its purposes.

(d) The power to acquire by gift, purchase, lease (as lessee), or otherwise, or to construct, improve, maintain, repair, operate or administer any component parts of a rapid transit system, together as a system, or singly, or in groupings, as rapid transit projects, or to contract for the maintenance, operation or administration thereof or to lease (as lessor) same for maintenance, operation or administration by private parties.

(e) The power to develop data, plans and information and develop and carry out mass transportation demonstration projects, including the development, testing and demonstration of new facilities, equipment, techniques and methods, and the improvement and utilization of transportation services and facilities, and any other means of developing, utilizing or improving mass transportation in

urban areas. Also, in other respects, the power to conduct engineering, financial and economic studies, to make plans, designs and tests related to rapid transit projects. In connection therewith the Authority may enter in a reasonable manner upon any lands, waters or premises for the purpose of making reasonable surveys, soundings, drillings and examinations and such entries shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries. In the event the Authority refuses to pay such damages within sixty days after written demand has been made by the person entitled to such damages and a finding has been made that such refusal was in bad faith, the Authority shall be liable to pay, in addition to the actual and consequential damages, all reasonble attorneys fees for the prosecution of the case against the Authority. The amount of such reasonable attorneys fees shall be determined by the trial jury and shall be included in any judgment which has been rendered in such action; provided, however, such attorneys fees shall be fixed on the basis of competent, expert evidence as to the reasonable value of such services, based on the time spent and legal and factual issues involved, in accordance with prevailing fees in the locality where such suit is pending, and provided further that the trial court shall have the discretion, if its finds such jury verdict fixing attorneys fees to be greatly excessive or inadequate, to review and amend such portion of the verdict fixing attorneys fees without the necessity of disapproving the entire verdict. The limitations contained in this section in reference to the amount of attorneys fees are not controlling as to fees which may be agreed upon by the plaintiff and his attorney for the services for such attorney in the action against the Authority.

(f) The power to cooperate, participate and coordinate with the Federal Government, or the State of Georgia, or any agency or instrumentality thereof, or any municipal or county governing body within the metropolitan area or any agency, instrumentality thereof, or the Atlanta Regional Metropolitan Planning Commission (1960 Ga. L. p. 3102, as amended), or any similar joint agency, in the execution of any studies, plans or projects designed for the coordi-

nation of its rapid transit system with other transportation in the metropolitan area and with any comprehensive planning and development of the metropolitan area.

(g) The power to acquire property, both real and personal, or rights of easement therein, or franchises necessary or convenient for the purposes of the Authority, by gifts, purchase, lease (as lessee) or contract.

(h) The power to make and execute all contracts and other instruments necessary or convenient to the exercise of the powers of the Authority, including the power to contract for managerial and operating services.

(i) The power to enter into contracts with the State of Georgia, its agencies and instrumentalities, and, particularly with the local governments within the metropolitan area, for public transportation services to be rendered by the Authority or its rapid transit system, and for any other purposes incidental to the establishment and maintenance of its rapid transit system, or any part or project thereof, and the usual facilities related thereto.

(j) The power to contract with any public utility, railroad or transportation company for the joint use of property or rights, or for the establishment of through routes, joint fares or transfer of passengers.

(k) The power to apply for and accept grants or other assistance from the Federal Government or from any source whatever, to act as agent for the Federal Government, and to enter into contracts, loans, leases or other transactions with the Federal Government.

(l) The power to borrow money from private lenders, or from the Federal Government, or to the extent otherwise authorized by law, from the State of Georgia or any local government within the metropolitan area, in such amounts as may be necessary for the purposes of the Authority and, in connection therewith to issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations of the Authority, and to secure the payment

thereof, or any part thereof, by pledge of its revenues, rentals, and receipts, and to make such agreements with the purchasers or holders thereof, or with others in connection therewith, whether issued or to be issued as the Board may deem advisable. But the Authority shall have no power in any manner to pledge the property, credit or taxing power of any local government, nor shall any of its obligations be deemed to be obligations of any local government, nor shall any local government be liable for the payment of principal or interest on such obligations.

(m) The power to fix, alter, charge and collect fares, rates, rentals and other charges for its facilities by zones or otherwise at reasonable rates to be determined exclusively by the Board, subject to judicial review as hereinafter provided.

(n) The power to make agreements with the Federal Government, the State of Georgia, any agency, instrumentality or political subdivision thereof, for payments to the Authority in lieu of fares for the transportation of personnel or other persons for whom such department, agency, instrumentality or political subdivisions desires such transportation.

(o) The power to contract for, or to provide and maintain, with respect to the facilities and property owned, leased, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health and safety. For these purposes a member of such force shall be a peace officer and, as such, he shall have authority equivalent to the authority of a policeman of the city or county in which he is discharing his duties.

(p) The Authority shall have no power to operate taxicabs, or facilities designed exclusively for the transportation of property for hire, nor shall it engage in other activities commonly regarded as private enterprise, except to

develop a rapid transit system, provide concessions, off-street parking and other facilities for the comfort, safety and convenience of transit passengers, and otherwise accomplish the purposes and policies expressed and contemplated in this Act.

Section 9. Fares, Rates, Rentals and Charges.

(a) The Board shall fix such fares, rates, rentals and charges in such amounts as shall be sufficient in the aggregate (when added to any other grants or funds available to the Authority) to provide funds for the payment of the interest on and principal of all bonds, certificates and other obligations payable from said revenues and to meet all other encumbrances upon such revenues as provided by any agreement executed by the Authority in connection with the issuance of bonds or certificates under this Act, and for the payment of all operating costs and expenses which shall be incurred by the Authority, including provisions for appropriate reserves.

(b) The term "charges" shall include revenues from contracts with the local governments within the metropolitan area under which the Authority has agreed to render for them the public transportation service as contemplated in Section 24 hereof.

(c) The Board shall determine by itself exclusively after public hearings as hereinafter provided, the routes, types of construction, equipment, facilities, and the scope and standards of service to be operated by the Authority, the scheduled services to be made available to the public and the amounts to be charged therefor. Before making any determinations as to scheduled services or amounts to be charged therefor, the Board shall first hold at least one public hearing after giving notice of the time and place by twice advertising on different days in the newspaper having the largest circulation in the metropolitan area not more than ten days nor less than five days prior to the hearing. As to all other matters, the Board may hold such public hearings as it may deem appropriate, and as to all public hearings, it may prescribe reasonable rules and regulations to govern such hearings not inconsistent with this

Act. Any person aggrieved by any determination of the Board as to any charge or scheduled service, or any change in any charge or scheduled service, except charges payable under contracts between local governments and the Authority as contemplated in Section 24, may challenge same by a petition in equity filed within 30 days of the determination complained of in any superior court of any county of the metropolitan area in which the charge or scheduled service may be applicable; provided, however, that the grounds of such challenge shall be restricted to abuse of discretion on the part of the Board or lack of authority under the law; otherwise, all determinations by the Board shall be final. Whenever two or more legal actions are brought against the same determination of the Board in different superior courts, exclusive jurisdiction thereof shall be vested in the first such court to docket such a petition and all other petitions may be refiled in the superior court having such exclusive jurisdiction.

(d) Prior to determining the basic routes over which the Authority shall operate its system and stations connected therewith, the Board shall consult with the local governing body of the territory involved, and, additionally, shall hold at least one public hearing within the territory of each local government within the metropolitan area at which the local governing body, or its representative, and the public may be heard.

(e) The function of the Board under subsection (c) and (d) shall not be delegated or exercised by any other person or body under any circumstances.

Section 10. Revenue Bonds.

(a) In borrowing money, as authorized in section 8 (1), the Board may, in a single issue, or in various issues from time to time, issue negotiable revenue bonds of the Authority for the purpose of paying all or a part of the cost of a rapid transit project or projects.

(b) Such bonds may be issued without any other proceeding, or the happening of any other conditions or events, than those proceeding, conditions, or events which are re-

quired by this Act. In the discretion of the Board, bonds of a single issue may be issued for the purpose of a particular rapid transit project. Any resolution authorizing the issuance of bonds under the provisions of this Act may be made effective immediately upon its passage and need not be published or posted, and any such resolution may be passed at any regular or special meeting of the Board. However, the by-laws of the Board shall provide for advance written notice to members of the Board of any proposed resolution for the issuance of any bonds hereunder and for waivers thereof before action thereon.

(c) The principal of and interest on such bonds shall be payable solely from the special debt retirement fund hereinafter established for this purpose in subsection (m) hereof.

(d) The bonds of each issue shall be dated, shall bear interest payable semi-annually at a rate not exceeding six percent per annum, and shall mature in such amounts and at such times as the Board may deem appropriate but not exceeding forty years from the date thereof. The bonds may be in coupon or registered form, or both, as the Board may determine, and the Board may make provision for the registration of any coupon bond as to principal alone and also as to both principal and interest.

(e) The Board may prescribe the form of the bonds and any coupons which may be used in conjunction therewith; it may determine the denominations of the bonds, the terms and conditions of their redemption before maturity, the medium of payment both as to principal and interest and the place of payment of principal and interest, which may be at any bank or trust company within or without the State.

(f) All such bonds shall bear the manual or facsimile signature of the chairman or vice-chairman of the Board, attested by the secretary or treasurer thereof, and bear the official seal of the Authority. Any coupons attached thereto shall bear the facsimile signature of the secretary or treasurer of the Board. When bonds or coupons bear the manual or facsimile signature of an officer of the Authori-

ty, such signature shall remain valid and effective for its original intent and purpose notwithstanding that prior to delivery the signer thereof may have ceased to hold the office indicated.

(g) All bonds issued under the provisions of this Act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the laws of this State. Such bonds are hereby declared to be issued for an essential public and governmental purpose, and said bonds and the interest thereon shall be exempt from all taxation within the State.

(h) All bonds of the Authority shall be sold by public competitive bidding at par plus accrued interest to the date of delivery; provided, however, the Authority may obligate itself to deliver any given issue of bonds to the purchasers thereof within any reasonable period of time after the date of sale and may pay as a penalty for delay in such delivery such reasonable sums as may be agreed upon in advance in writing with the purchaser or purchasers of such bonds. All bonds of the Authority shall be advertised and offered prior to the fixing of the interest rates thereon, and bids thereon shall be competitive as to the interest rate offered by each bidder; provided, on any issue the Authority may make rules limiting the number of divisions into which the bonds of various maturity dates may be divided, and the number and percentage spreads of the different interest rates which may be bid to apply such divisions of the bonds and provided further, the Authority may require reasonable security for the performance of the contract of purchase of any successful bidder at any public competitive bidding held. The advertising of bond issues of the Authority and invitations to bid shall be as customarily done in the handling of governmental bond issues and section 14(b) as to these matters shall not necessarily apply. The Authority may negotiate the sale of its bonds to the Federal Government.

(i) The proceeds of such bonds shall be used solely for the payment of the cost of a rapid transit project or rapid transit projects. If the proceeds of a bond issue are not

sufficient to cover the cost thereof, unless otherwise provided in the resolution authorizing the issuance of the bonds, or in any trust indenture pertaining thereto, additional bonds may in like manner be issued to provide the amount of the deficiency. Unless otherwise provided in the resolution authorizing the issuance of the bonds, or in any trust indenture pertaining thereto, such additional bonds shall be deemed to be of the same issue and to be paid from the same fund, without preference or priority, as the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds were originally issued, the surplus shall be paid into such fund as may be provided in the resolution authorizing the issuance of the bonds or in any trust indenture pertaining thereto or at the specific direction of the Board may be used for any other rapid transit project or projects.

(j) Prior to the preparation of definitive bonds the Board may issue interim receipts, interim certificates, or temporary bonds exchangeable for definitive bonds upon the issuance of the latter.

(k) In the discretion of the Board any issue of such revenue bonds may be secured by a trust indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust indenture may pledge or assign fares, fees, rentals, charges, revenues and earnings of the Authority, including the proceeds derived from the sale of any surplus property of the Authority. Either the resolution authorizing the issuance of the bonds or any trust indenture pertaining thereto may contain reasonable provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants concerning the duties of the Authority in relation to the acquisition of property, the construction of the project, the maintenance, operation, repair and insurance of the property, and the custody, safeguarding and application of all monies, including the proceeds derived from the sale of property of the Authority, both real and personal, and may also provide that any project shall be constructed and paid

for under the supervision and approval of consulting engineers or architects employed or designated by the Board and satisfactory to the original purchasers of the bonds issued therefor, and may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other monies be satisfactory to such purchasers, and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued. It shall be lawful for any bank or trust company incorporated under the laws of this State to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the Board. Such indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the Board may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repair of the project affected by such indenture.

(l) The Board shall, in the resolution authorizing the issuance of bonds or in any trust indenture pertaining thereto, provide for the payment of the proceeds of the sale of the bonds to any bank or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes hereof, subject to such regulations as this Act and such resolution or trust indenture may provide.

(m) The fares, fees, rentals, charges, revenues, and earnings of the Authority, monies derived from the sale of any surplus property of the Authority, and gifts, grants, and contributions from any source whatever, unless otherwise pledged and allocated, may be pledged and allocated by the Board to the payment of the principal of and interest on bonds of the Authority as the resolution authorizing the issuance of bonds, or any trust instrument pertaining thereto, may provide, and such funds so pledged, from whatever source received, including funds received from one or more or all sources, shall be set aside at regular intervals as may

be provided in the resolution or trust indenture, into a special debt retirement fund which shall be pledged to and charged with the payments of (1) the interest on such bonds as such interest shall fall due, (2) the principal of the bonds as same shall fall due, (3) the necessary charges of paying agent or agents for paying principal and interest, and (4) any premium upon bonds retired by call or purchase as hereinafter provided. The use and disposition of such special debt retirement fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or in any trust indenture, pertaining thereto, but, except as may otherwise be provided in such resolution or trust indenture, such fund shall be for the benefit of all bonds without distinction or priority of one over another. Subject to the provisions of the resolution authorizing the issuance of the bonds or in any trust indenture, surplus monies in the special debt retirement fund may be applied to the purchase or redemption of bonds and any such bonds so purchased or redeemed shall forthwith be cancelled and shall not again be issued.

(n) Any holder of bonds issued under the provisions of this Act or any of the coupons appertaining thereto, and the trustee under the trust indenture, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by any trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted hereunder or under such resolution or trust indenture, and may enforce and compel performance, of all duties required by this Act or by such resolution or trust indenture, to be performed by the Authority, or any officer thereof, including the fixing, charging and collecting of fares, fees, rentals, revenues, and other charges for the use of the facilities and services furnished and, in the event of a default of the Authority upon the principal and interest obligations of any bond issue, shall be subrogated to each and every right, specifically including the contract rights of collecting fares, fees, rentals, revenues and other charges against the City of Atlanta and the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett.

(o) The Board is hereby authorized to provide by resolution for the issue of refunding bonds of the Authority for the purpose of refunding any bonds issued under the provisions of this Act and then outstanding, together with accrued interest thereon. The issuance of such refunding bonds, the maturities and all other details thereof, the rights of the holders thereof and the duties of the Authority in respect to the same, shall be governed by the foregoing provisions of this Act insofar as the same may be applicable.

(p) Bonds of the Authority shall be confirmed and validated, insofar as applicable, in accordance with the procedure of the Revenue Bond Law (Ga. L. 1937, p. 761, et. seq. as amended). The petition for validation shall also make party defendant to such action any municipality, county authority, subdivision or instrumentality of the State of Georgia, if subject to be sued, which has contracted with the Authority for the services and facilities of the project for which bonds are to be issued and sought to be validated and such municipality, county, authority, subdivision, or instrumentality shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court and the validity of the terms thereof to be determined and the contract or contracts adjudicated as security for the payment of any such bonds of the Authority. The judgment of validation shall be final and conclusive with respect to such bonds, and the security therefor, against the Authority, and against any municipality, county, authority, subdivision or instrumentality of the State of Georgia, if a party to the validation proceedings, contracting with the Authority.

(q) While any of the bonds issued by the Authority remain outstanding, the powers, duties or existence of said Authority, or of its officers, employees or agents, shall not be diminished or impaired in any manner that will affect adversely the interest and the rights of the holders of such bonds, and no other entity, department, agency or authority will be created which will compete with the Authority to such an extent as to affect adversely the interest and rights of the holders of such bonds. The provisions of this Act shall be for the benefit of the Authority and the holders

of any such bonds, and upon the issuance of bonds under the provisions hereof, shall constitute a contract with the holders of such bonds.

(r) All monies received pursuant to the authority of this Act, whether as proceeds from the sale of bonds, as grants or other contributions, revenues, income, fees and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this Act.

(s) Bonds issued hereunder shall not be deemed to constitute a debt of any local government in the metropolitan area. Such bonds shall be payable solely from the special debt retirement fund hereinbefore established therefor and the issuance of such bonds shall not directly or indirectly or contingently obligate any local government in the metropolitan area to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, and all such bonds shall contain recitals on their face covering substantially the import of this subsection.

(t) Any action to protect or enforce any rights under the provisions of this Act or any suit or action against such Authority, except as provided in section 9 (c), shall be brought in the Superior Court of Fulton County, Georgia, and any action pertaining to validation of any bonds issued under the provisions of this Act shall likewise be brought in said court, which shall have exclusive, original jurisdiction of such actions.

(u) The Authority may invest and reinvest any idle monies, including funds held in reserve or debt retirement funds not required for immediate disbursement, in bonds or notes of the United States or unconditionally guaranteed by the United States or in bonds or notes of the State of Georgia or unconditionally guaranteed by the State of Georgia, and reconvert same when their proceeds are necessary for disbursement.

(v) The Board may by appropriate action prescribe the circumstances, not inconsistent with law, under which a bond or certificate will be considered as mutilated, destroyed

or lost and may make reasonable provision for its replacement.

Section 11. Equipment Trust Certificates. The Board shall have continuing power to purchase equipment, and in connection therewith execute agreements, leases or equipment trust certificates in the form customarily used and appropriate to effect such purchases. The Board may issue equipment trust certificates in a manner similar to that provided for bonds under section 10. All money required to be paid by the Authority under the provisions of such agreements, leases and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues and earnings of the Authority, monies derived from the sale of any surplus property of the Authority and gifts, grants and contributions from any source whatever. Payment for such equipment or rentals therefor, may be made in installments; the deferred instaliments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts, and title to such equipment may or may not vest in the Authority until the equipment trust certificates are paid.

Section 12. Power of Eminent Domain. The Authority shall have no power of eminent domain, but the City of Atlanta and the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett may, for purposes of the Authority, exercise the broadest power of eminent domain available to them or any agency or joint agency thereof, under any statute, and convey to the Authority any property so acquired upon payment or credit for the total cost of any acquisition hereunder. However, no local governing body shall exercise any power of eminent domain hereunder with respect to property located beyond its territorial limits.

Section 13. Removal and Relocation of Utility Structures, Etc. (a) The Authority shall have the power to require any public utility, railroad or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances or facilities in, upon, under, over, across or along any ways on which the Authority has the right to own, construct, operate or main-

tain its rapid transit system, to remove or relocate such installation, structures, equipment, apparatus, appliances or facilities from their locations. If the owner or operator thereof fails or refuses to remove or relocate them, the Authority may proceed to do so. The Authority may provide the necessary new locations, and for that purpose the power of eminent domain as provided in section 12 may be exercised provided the new locations shall not be in, on or above, a public way; the Authority may also acquire the necessary new locations by purchase or otherwise. The Authority shall reimburse the public utility, railroad or other public service corporation, for the cost of relocations which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances or facilities and any salvage value derived from the old installations, structures, equipment, apparatus, or appliances.

(b) The Authority shall have the power to prepare plans for and assist in the relocation of persons (including individuals, families, business concerns, nonprofit organizations and others) displaced by operations of the Authority in carrying out a rapid transit project, and to make relocation payments to or with respect to such persons including the making of such payments financed by the Federal Government.

Section 14. Competitive Bidding on Contracts, Etc.

(a) Except in the acquisition of unique property which for any reason is unobtainable in the open market, and except as hereinafter otherwise provided, competitive bids shall be secured before any acquisition or disposition of properties by contract or otherwise is made by the Authority, or before any contract is awarded for construction, alterations, supplies, equipment, repairs or maintenance, or for rendering any services to the Authority; acquisitions shall be made from, and contracts awarded to, the lowest responsible bidder, and dispositions of property shall be made to the highest responsible bidder. No acquisition of any unique property unobtainable in the open market shall

be made without the express approval of the Board where the amount involved is $5,000 or more. Nothing in this section shall apply to contracts for professional services or the personal services of employees.

(b) All such acquisitions, dispositions and contracts involving $5,000 or more shall be awarded only after advertising in the local newspaper of the largest circulation in the metropolitan area at least once a week in the two weeks prior to the bid opening. Bids shall be publicly opened and read aloud at a date, time and place designated in the invitation to bid. Invitations to bid shall be sent at least one week prior to the bid opening to at least three potential bidders who are qualified technically and financially to submit bids, or, in lieu thereof, a memorandum shall be kept on file showing that less than three potential bidders so qualified exist in the market area within which it is practicable to obtain bids.

(c) Except as otherwise provided in this section, written price quotations from at least three qualified and responsible vendors, or vendees as the case may be, shall be obtained for all acquisitions, dispositions and contracts involving less than $5,000 and over $1,000, or, in lieu thereof, a memorandum approved by the Board shall be kept on file showing that less than three vendors or vendees, as the case may be, so qualified exist in the market area within which it is practicable to obtain quotations. Acquisitions shall be made from, and contracts awarded to, the lowest responsible quotation, and dispositions of property shall be made to the highest responsible quotation.

(d) Acquisitions, dispositions and contracts involving $1,000 or less may be negotiated with or without competitive bidding under sound procurement procedures as promulgated and established by the Board.

(e) Competitive bidding requirements may be waived if it is determined by the general manager, or in such other manner as the Board may by regulation provide, that an emergency directly and immediately affecting customer service or public health, safety or welfare requires im-

mediate delivery of supplies, materials, equipment or services; provided, however, that a record explaining the emergency shall be submitted to the Board at its next regular meeting and thereafter kept on file.

(f) All concessions granted by the Authority for the sale of products or the rendition of services for a consideration on Authority property shall be awarded only pursuant to written specifications after competitive bidding and to the highest responsible bidder in a manner similar to that required in subsection (b).

(g) Contracts for the sale, lease or other disposition of real property owned by the Authority shall be awarded only after competitive bidding and to the highest responsible bidder in a manner similar to that required in subsection (b).

(h) Contracts for the management of Authority-owned property or facilities may be negotiated.

(i) Requirements of the Authority shall not be split into parts for the purpose of avoiding the provisions of this section.

(j) The Authority shall have the right to reject any or all bids or quotations, or parts of any or all bids or quotations, whenever in the opinion of the Board such rejection is necessary for the protection of the interests of the Authority. In every such case a record shall be made setting forth the reason for such rejection which record shall thereafter be kept on file.

Section 15. Conflict of Interests.

(a) Every member of the Board and every employee of the Authority who knowingly has any interest direct or indirect in any contract to which the Authority is or is about to become a party, or in any other business of the Authority, or in any firm or corporation doing business with the Authority, shall make full disclosure of such interest to the Board and, if a Board member, to his appointing au-

thority. Failure to disclose such an interest shall constitute cause for which a Board member may be removed by the appointing power, or an employee discharged or otherwise disciplined at the discretion of the Board.

(b) Provisions of the act of the General Assembly approved March 10, 1964 (1964 Ga. L. p. 261), as amended, regulating the conduct of officers, employees and agents of political subdivisions, municipal and other public corporations and other public organizations, shall be applicable to the conduct of its Board members, officers, employees and agents of the Authority.

(c) Any contract or transaction of the Authority involving a conflict of interest not disclosed under subsection (a) hereof, or a violation of the act of the General Assembly approved March 10, 1964, (1964 Ga. L. p. 261), as amended, or a violation of any other provision of law applicable to the Authority, its Board members, officers, or employees regulating conflicts of interest, shall be voidable by the Board.

Section 16. Financial Accounts, Audits, Reports. (a) The Board shall make provision for a system of financial accounting and controls, audits and reports. All accounting systems and records, auditing procedures and standards, and financial reporting shall conform to generally accepted principles of governmental accounting. Copies of each financial report required under this section shall be furnished to each local governing body of each local government in the metropolitan area. All financial records, reports and documents of the Authority shall be public records and open to public inspection under reasonable regulations prescribed by the Board.

(b) The Board shall adopt a fiscal year, establish a system of accounting and financial control, designate the necessary funds for complete accountability and specify the basis of accounting for each such fund. The Board shall cause to be prepared a financial report on all funds at least quarterly and a comprehensive report on the fiscal operations and conditions of the Authority annually.

(c) On or before the last day of the first month of its fiscal year the Board shall annually employ a firm of independent certified public accountants licensed to practice in this State as auditors to make a continuous audit of the financial books, records, and accounts of the Authority. Such auditors shall have no personal interest directly or indirectly in the fiscal affairs of the Authority and shall be experienced and qualified in the accounting and auditing of public bodies. A contract of employment shall be executed with such auditors prescribing their duties, the period to be covered, the professional fees to be paid, the responsibilities of the Authority and other appropriate matters. The contract shall be awarded upon the basis of professional competence in the field of accounting and auditing for public bodies and subject to the rules of ethics of the American Institute of Certified Public Accountants. Such auditors shall be paid out of the general operating funds of the Authority.

(d) Upon employment such auditors shall perform a complete independent audit for the fiscal year. In such audit they shall point out any irregularities found to exist and report the results of their examination, including their unqualified opinion on the presentation of the financial position of the various funds and the results of the Authority's financial operations. If such auditors are unable to express an unqualified opinion they shall so state and shall further detail reasons for their qualifications or disclaimer of opinion including recommendations necessary to make possible future unqualified opinions. Such auditors shall review and make recommendations in separate opinions in such matters as they may deem appropriate for improvements in records, system procedures, internal control methods, equipment use, organization, administration, insurance coverage and other matters of financial control and relevancy. They shall also be available for continuous financial consultation and shall perform special examinations, studies, management reviews, system design and installation as the Board may direct. The Board may also provide for the independent auditing of any facility of the Authority leased or contracted out to private parties or local governments.

Section 47. Budgets and Budgeting Procedures. (a) The Board shall make provisions for an annual operating budget and an annual capital improvements budget. Every budget, proposed or as finally adopted, shall conform to generally accepted budgetary standards of public bodies. Copies of each budget, proposed or as finally adopted, shall be furnished to each local governing body of each local government in the metropolitan area. In addition to the procedures herein prescribed the Board may adopt such budgetary procedures as it may deem appropriate.

(b) On or before the last day of the tenth month of the fiscal year the Board shall propose an annual operating budget for the ensuing fiscal year and hold a public hearing thereon. After such public hearing the Board shall review its proposed budget, and, on or before the last day of the fiscal year, it shall adopt an annual operating budget for the ensuing fiscal year. In the annual operating budget each operating fund shall be set forth separately and show an estimate of the fund balance to be available at the beginning of the year, an estimate of anticipated credits during the year according to source, an estimate of anticipated charges, including capital outlay or debt service properly to be financed from anticipated revenues, and comparative data on the last two completed fiscal years and similar data, actual or estimated, for the current year. In no event shall a budget be approved which provides for deficit financing with respect to any operating fund.

(c) At the time and in the manner prescribed in subsection (b), insofar as applicable, the Board shall propose and adopt an annual capital improvements budget. The proposed capital improvements budget shall show all capital improvement projects in process of completion, those to be undertaken during the ensuing fiscal year and those anticipated to be undertaken during the ensuing ten years. The proposed budget shall also show the proposed method of financing each proposed project and the effect thereof on the debt structure of the Authority. After a public hearing the Board shall review its proposed budget and on or before the last day of the fiscal year it shall adopt an annual capital improvements budget for the ensuing fiscal year.

No contract for the purchase or construction of any capital improvement project shall be authorized, except to meet a public emergency certified as such by the Board, unless it is included in the annual capital improvements budget; however, the Board may propose and adopt an amendment to the annual capital improvements budget by following the procedure herein prescribed for adopting the original budget.

Section 18. Engineering Survey. At least every three years, the Board shall employ a firm of qualified independent engineers to survey the condition of the Authority's facilities and operations from an engineering standpoint and make a report thereof and any recommendations for improvement in its physical facilities and operating procedures. Copies of such report shall be furnished to each local governing body of each local government in the metropolitan area.

Section 19. Insurance on Leased Property. All contracts for the lease of Authority property shall require the lessee to procure, maintain and pay for insurance to reasonably protect the Authority's liability related thereto, and further to insure the leased property in the Authority's name for its full value against all reasonable and insurable risks. Such contracts shall contain a clause whereby the lessee agrees to indemnify and hold the Authority harmless for the negligence of lessee, his employees and agents.

Section 20. Rules and Regulations; Miscellaneous. (a) The Board may promulgate reasonable rules and regulations, not inconsistent with law, for the control and management of its operations, properties, employees and patrons.

(b) The Board may provide for the recognition of authorized representatives of the employees of the Authority and for bargaining with its employees through such agents in the same manner and to the same extent as if they were the employees of any privately owned transportation system.

(c) All provisions of general law applicable to the records and documents of counties and municipalities and public access thereto shall be fully applicable to the records and

documents of the Authority. The Board shall make reasonable rules and regulations concerning access to its records and documents and may charge reasonable fees for copies on certifications thereof.

(d) As to copies of financial reports and documents under Section 16, budget reports and documents under section 17, engineering reports and documents under section 18, and proposed rapid transit contracts under section 24, the Board may provide for the printing and distribution of a reasonable supply thereof to the public and may, in its discretion, require payment of a reasonable charge therefor.

Section 21. Tax and Regulatory Exemptions. (a) The property of the Authority, both real and personal, its acts, activities and income shall be exempt from any tax or tax obligation. In the event of any lease of Authority property, or any other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest, nor shall it apply to the income of the lessee. Otherwise, however, and for purposes of taxation, when property of the Authority is leased to private parties to be employed solely for purposes of the Authority, the acts and activities of the lessee shall be considered as the acts and activities of the Authority and the exemption hereunder shall apply to such acts and activities.

(b) The Authority shall also be exempt from any regulation by the Public Service Commission of this State, except that when any proposed action of the Authority, or any local government on behalf of the Authority, may place a public utility, railroad or public service corporation in violation of the requirements of the Commission, or create the need for collaboration with respect to compliance with the requirements of the Commission, the Authority shall obtain the Commission's cooperation and approval of the proposed action. In such matters and particularly with respect to the matters contemplated in section 8 (j), the Commission shall cooperate with the Authority to accomplish the purposes and policies of this Act.

Section 22. Tort Liability; Insurance. The Authority shall not enjoy governmental immunity from tort liability, but shall be liable therefor as any private corporation except that no execution shall be levied on any property of the Authority prior to ninety (90) days from the date of a final judgment against the Authority. The Authority shall contract for adequate insurance, indemnification or similar protection against any loss, liability or other risk, hazard or responsibility to which it may be exposed or which it may accept on account of its property, personnel, or operations.

Section 23. Taxing Power Denied. The Authority shall have no power to impose any tax on any subject of taxation within the metropolitan area for any purpose whatsoever.

Section 24. Local Government Participation. (a) Provision for a rapid transit system within the metropolitan area is declared for the purposes of this Act to be an essential governmental function and a public purpose of the City of Atlanta and the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett.

(b) The Board and each local governing body of the counties of Fulton, DeKalb, Cobb, Clayton, and Gwinnett, and of the City of Atlanta may negotiate and determine the extent of financial participation and the time or times such financial participation may be required with respect to each of the local governments in order to finance provision for a rapid transit system through the joint instrumentality of the Authority. If such determination contemplates a contractural obligation on the part of a local government to make payments to the Authority over a period of time exceeding one year or a contractural obligation on the part of a local government to issue any bonds or other evidences of indebtedness, such determination shall take the form of a proposed rapid transit contract to be executed between the Authority and the local government. Notwithstanding any other provision of this Act, no contract on the part of any local government to make payments of any kind to the Authority shall become final except by the action of the local governing body thereof;

the negotiation, determination and proposed rapid transit contract contemplated under this subsection shall not be construed to constitute a final contract or obligation, but the final execution of a rapid transit contract shall be completed in every instance in the manner contemplated in subsections (c), (d), (e), or (h) hereof.

(c) As a method of financing the participation required of it, in its entirety or any part thereof, under such a proposed rapid transit contract, a local government may, in the manner prescribed by law and subject to the limitations prescribed by law, issue general obligation bonds, pay over the proceeds thereof to the Authority and thereby complete the execution of the proposed rapid transit contract under which the Authority shall agree to perform for it the aforesaid governmental function and provide the necessary transportation services and facilities.

(d) As an alternative method of financing the participation required of it under such a proposed rapid transit contract, a local government may contract with the Authority by which the Authority may perform for such local government the aforesaid governmental function and obligate itself to pay on a periodic basis for the public transportation services and facilities contracted for, including the payment of the principal of, and interest on, any obligations issued by the Authority for the purpose of financing the cost of any rapid transit project or projects and this may include amounts necessary to establish and maintain reasonable reserves in connection therewith.

(e) When there is a proposed rapid transit contract to be executed between the Authority and a local government under subsection (d), the local governing body may proceed on its own resolution to complete the execution of the contract if it determines that the participation required thereunder may reasonably be financed without the levy of any new or increased tax on the property situated within its territory. In this event, the resolution of the local governing body that the participation required thereunder may reasonably be financed without the levy of any new or increased tax on the property situated within its territory

shall be conclusive of that fact. The Authority under this subsection shall be subject to and limited by any local act heretofore or hereafter enacted, more particularly applicable to the local governing body of any local government.

(f) Otherwise when there is a proposed rapid transit contract to be executed between the Authority and a local government under subsection (d), the local governing body shall call an election and shall submit to the qualified voters thereof, in a referendum as hereinafter provided, the question whether or not the local government should so obligate itself to the extent of the dollar amount or amounts involved therein.

(g) The procedure for holding the referendum called for in subsection (f) shall be as follows: The local governing body shall cause to be published in a newspaper having general circulation throughout the territory of the local government involved, once each week for three weeks immediately preceding the week during which the referendum is to be held, a notice to the electors thereof that on the day named therein an election will be held to determine the question whether or not the local government shall obligate itself to the Authority to the extent of the dollar amount or amounts involved in the proposed rapid transit contract. Such notice shall specify the extent of the total dollar amount or amounts involved under the proposed rapid transit contract. Such special election shall be held at all the election districts within the territorial limits of the local government involved except that an election called by the local governing body of any county within the metropolitan area shall not be held in any part thereof which is within the territorial limits of the City of Atlanta. The ballot submitting the question shall be in a form determined by the local governing body, and the form of the ballot shall be published as a part of the aforesaid notice. Each election held under the provisions of this subsection (including one held within the territorial limits of the City of Atlanta) is hereby declared to be a county election and shall be governed by and conducted in accordance with the provisions of the Georgia Election Code. The board of registrars of each county shall provide the necessary lists for

conducting any such election held within its county. After consolidation, the ordinary shall transmit the returns of such an election to the local governing authority calling the election, or its delegate, who shall officially declare the result. The expense of such an election held within the territorial limits of the City of Atlanta shall be paid by the City of Atlanta.

(h) If a majority of those voting in said election vote in favor of the proposition submitted then the local governing body shall thereby be authorized to complete the execution of a rapid transit contract, or contracts, wherein the total dollar amounts thereof do not exceed the total dollar amounts involved in the proposition submitted.

(i) A local government may elect any method provided in this section to finance the participation required of it in whole or in part, and the election of one method shall not preclude the election of another method with respect thereto or with respect to any additional or supplementary participation determined to be necessary.

(j) When the Authority and a local government have completed the execution of a rapid transit contract in full compliance with the requirements of this Act, such contract shall constitute an obligation on the part of the local government for the payment of which its good faith and credit are pledged, but on no other way can the good faith and credit of any local government be pledged with respect to a rapid transit contract.

(k) Any local government may use public funds to provide for a rapid transit system within the metropolitan area and may levy any taxes authorized to it by law to the extent necessary to fulfill the obligations incurred in contracts with the Authority; provided that no local county govern-

ment shall have the power to levy any tax on any subject of taxation situated within the territorial limits of the City of Atlanta when the City of Atlanta has a contract with the Authority and is itself using its public funds or levying a tax for that purpose.

(l) Any local government may transfer to the Authority any property or facilities, or render any services, with or without consideration, which may be useful to the establishment, operation or administration of the rapid transit system contemplated hereunder, and may contract with the Authority for any other purpose incidental to the establishment, operation or administration of such system, or any part or project thereof or the usual facilities related thereto.

Section 25. Severability. In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconsitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional was not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 26. All laws or parts of laws in conflict with this Act are hereby repealed.

Approved March 10, 1965.

See Enrolled Act for affidavit and advertisement.